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## **State-Level Catfish Labeling Laws**

by

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Amid concerns over the viability of the domestic catfish industry and increasing importation of Vietnamese products labeled as “catfish,” Congress added language to the 2002 Farm Bill (Farm Security and Rural Investment Act of 2002) requiring retail-level country-of-origin-labeling (COOL) for seafood, including catfish.<sup>1</sup> However, the issue has also been regulated on the state level as well. Currently, six states- Tennessee, Louisiana, Arkansas, Mississippi, Alabama and Kansas- have labeling requirements for the sale of catfish. The purpose of this paper is to compare and contrast the provisions and requirements of the state statutes.

Many of the states’ statutory requirements are similar. Every statute applies to “catfish” and/or “catfish products” capable of human consumption. Further, each state requires that all individual packages<sup>2</sup> be clearly labeled with the required information.

However, the differences begin there, with the content of the labeling. There are two basic approaches that legislatures have used to phrase the labels. The first is essentially country of origin labeling. Kansas’s statute is an example of this approach.<sup>3</sup> It requires that “catfish which is produced outside of the United States” be “clearly labeled . . . as having been imported.”<sup>4</sup> The other three states to use this approach- Alabama, Mississippi, and Arkansas- have virtually identical language, but more specifically delineated requirements. Arkansas requires that all catfish products be labeled as belonging to one of four categories: “Farm-Raised Catfish,” “River or Lake Catfish,” “Imported Catfish” or “Ocean Catfish.”<sup>5</sup> Alabama<sup>6</sup> and Mississippi<sup>7</sup> have a similar system, but also include an additional requirement that domestic catfish be further labeled with the name of the state in which it was produced.

The second approach to regulating the industry has been used by five of the six states with statutory requirements. In this approach, legislators allow the use of the “catfish” label only on fish that belong to certain scientific order or family. The “catfish” order is *Siluriformes*. Within the order, there are thirty-four families of catfish. The primary family raised for aquaculture in the United States is *Ictaluridae*, while *Pangasidae*, the “giant catfishes,” are the main family raised in Vietnam. As shown below, state legislators enacted laws protecting certain families of catfish while specifically prohibiting the sale of others.

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<sup>1</sup> See §10806 of P.L. 107-171 (Farm Security and Rural Investment Act of 2002), amending 21 U.S.C. §403.

<sup>2</sup> With a few exceptions, as discussed below.

<sup>3</sup> Kan. Stat. Ann. §65-6a53

<sup>4</sup> *Id.*

<sup>5</sup> Ark. Code Ann. § 20-61-206.

<sup>6</sup> Ala. Code §2-11-33

<sup>7</sup> Miss. Code Ann. § 69-7-607

<u>State</u>	<u>Required Classification</u>	<u>Specifically Prohibited Classifications</u>
Alabama <i>Ala. Code §2-11-31</i>	Order Siluriformes <sup>8</sup> Family Anarhichadidae <sup>9</sup>	None
Arkansas <i>Ark. Code Ann. §20-61-202</i>	Family Ictaluridae	None
Louisiana <i>La. Rev. Stat. Ann. §56:578.11</i>	Family Ictaluridae Family Ariidae Family Loricariidae	Family Pangasiidae
Tennessee <i>Tenn. Code Ann. §53-1-102, 53-1-115</i>	Family Ictaluridae Family Anarchichadidae	Family Siluridae Family Clariidae Family Pangasiidae
Mississippi <i>Miss. Code Ann. §69-7-605</i>	Family Ictaluridae	Family Siluridae Family Clariidae Family Pangasiidae

Other state differences are apparent when legislatures decide who exactly is required to label their products. The Kansas statute, for example, is limited in its application only to retail sales of catfish for off-premise consumption, rather than restaurant sale for immediate consumption.<sup>10</sup> Similarly, Alabama prohibits unlabeled catfish products from being offered for “direct retail sale for human consumption by a processor, distributor or retailer.” While “retailer” is defined as “any person offering for sale catfish products to individual consumers and representing the last sale prior to human consumption,” “restaurants and other eating establishments” are excluded.<sup>11</sup> As a result, while the local grocery store must label the catfish appropriately, the restaurant next door does not.<sup>12</sup> The Mississippi version of the law is almost identical, and has the same requirements and restrictions, including the restaurant exclusion.<sup>13</sup> Finally, in Tennessee, proper labeling is required for advertising, distribution, processing, labeling, wholesale or retail sale of “[u]nprepared or packaged imported catfish and imported catfish products.”<sup>14</sup> Consequently, the labeling requirements are limited to those businesses that do not sell prepared foods for immediate consumption.

Louisiana and Arkansas’s statutes however, do require that restaurants label catfish. Louisiana’s statute applies to persons who “possess, sell, purchase, trade, barter, or exchange or attempt to sell, purchase, trade or exchange any catfish or catfish product.”<sup>15</sup> As written, this includes the sale of any kind of food- including ready-to-eat dishes. Under Arkansas’s statute, “[n]o catfish product shall be offered for direct retail sale for human consumption by a processor,

<sup>8</sup> As discussed above, the order *Siluriformes* includes all families of catfish. As a result, this requirement is somewhat misleading, as it does not in effect actually exclude anything from the “catfish” label.

<sup>9</sup> The family *Anarhichadidae*, or “wolffish,” is not a member of the catfish order. Instead, it is a member of the suborder *Zoarcoidei*, and includes the genera *Anarhichas* and *Anarrhichthys*.

<http://animaldiversity.ummz.umich.edu/site/accounts/classification/Anarhichadidae.html>

<sup>10</sup> Kan. Stat. Ann. §65-6a53

<sup>11</sup> Ala. Code §2-11-33

<sup>12</sup> For retailers selling catfish products “not wrapped or in a container,” or selling “river or lake catfish exclusively and directly to the consumer[,]” the law provides for exceptions to individual labeling by allowing a sign to be placed on the display case or refrigeration unit reasonably visible to the consumer. Ala. Code § 2-11-33 (b) and (c).

<sup>13</sup> Miss. Code Ann. § 69-7-607.

<sup>14</sup> Tenn. Code Ann. § 53-1-115

<sup>15</sup> La. Rev. Stat. Ann. §56:578.11

distributor, or retailer unless the catfish product name is specifically labeled”.<sup>16</sup> Unlike Alabama and Mississippi’s versions, however, the Arkansas definition of retailer does not exclude restaurants. Instead, “direct retail sale” is defined as the “sale of catfish products individually or in small quantities directly to the consumer[,]”<sup>17</sup> while a “retailer” is “any person offering for sale catfish products to individual consumers and representing the last sale prior to human consumption.”<sup>18</sup>

While there are other minor differences in the six state statutes, the differences discussed above are the most significant. These laws, as a whole, affect an entire industry—both domestic and international. They have the potential to bring long-lasting effects to producers who are deciding what fish to raise, retailers buying and selling the products, and consumers purchasing the subsequently labeled “catfish.”

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<sup>16</sup> Ark. Code Ann. § 20-61-206

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*